



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2013-0600; FRL-9906-74-OAR]

RIN 2060-AR89

Protection of Stratospheric Ozone: Updates to HCFC Trade Language as Applied to Article 5 Countries; Ratification Status of Parties to the Montreal Protocol; and Harmonized Tariff Schedule Commodity Codes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update: regulations governing trade of HCFCs to reflect that HCFC control measures have now taken effect for Parties operating under Article 5 of the Montreal Protocol; references to Party ratification status; tariff codes for ozone depleting substances to address changes made in 2012 by the U.S. International Trade Commission; and other minor provisions. In the “Rules and Regulations” section of this **Federal Register**, we are making these conforming edits as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OAR-2013-0600**, by one of the following methods:

- www.regulations.gov: Follow the online instructions for submitting comments.
- Email: a-and-r-docket@epa.gov

- Mail: Docket # EPA-HQ-OAR-2013-0600, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue NW, Washington, DC 20460
- Hand Delivery: Docket #EPA-HQ-OAR-2013-0600 Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW, Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-HQ-OAR-2013-0600**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. If you want to submit confidential comments, please send them to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of you comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For

additional information about EPA's public docket, visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

FOR FURTHER INFORMATION CONTACT: Jeremy Arling by telephone at (202) 343-9055 or by email at arling.jeremy@epa.gov, or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Ave, NW, Washington DC, 20460. You may also visit the Ozone Protection website of EPA's Stratospheric Protection Division at www.epa.gov/ozone/strathome.html for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion and related topics.

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this proposed rule?

This document proposes to take action on "Protection of Stratospheric Ozone: Updates to HCFC Trade Language as Applied to Article 5 Countries; Ratification Status of Parties to the Montreal Protocol; and Harmonized Tariff Schedule Commodity Codes." We have published a direct final rule in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does This Action Apply to Me?

This rulemaking will affect the following categories: Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gas manufacturers and importers; Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690), including chemical gases and compressed gases merchant importers.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding the types of entities that could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the “**FOR FURTHER INFORMATION CONTACT**” section.

For further information, please see the information provided in the direct final action that is located in the “Rules and Regulations” section of this **Federal Register** publication.

III. What are the procedures for notice and comment on this rulemaking?

The direct final rule that’s publishing in the “Rules and Regulations” section of this **Federal Register** will be effective on **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive adverse comment by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that all or part of the direct final rule will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR part 2. If you submit comments and include information that you claim as

confidential business information, we request that you submit them directly to Jeremy Arling in two versions: one clearly marked “Public” to be filed in the public docket, and the other marked “Confidential” to be reviewed by authorized government personnel only. For further information, please see the **ADDRESSES** section of this document.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA already requires recordkeeping and reporting for ozone-depleting substances and this action does not amend those provisions. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82, subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0498. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of

small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

We have considered the economic impacts of this rule on small entities. For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) a small business that is primarily engaged in industrial gas manufacturing as defined by NAICS codes 325120 with fewer than 1000 employees or engaged in wholesale of those gases as defined by NAICS codes 424620 with fewer than 100 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The only provision of this proposed rule that has the potential to affect small entities is the update to the HCFC trade ban prohibiting the import or export of HCFCs to four countries. Based on data reported to EPA, there are fewer than half a dozen companies that have exported to these countries in the last few years and none are small businesses.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. In 2013 and 2014, EPA sent a letter to all importers and exporters notifying them of the trade ban provisions in the Montreal Protocol. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations. This rule updates the regulations to reflect the provisions of the Montreal Protocol related to trade with non-Parties. Other changes in this rule are to improve the accuracy and consistency of the regulations and have no to little impact on the regulated community. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Potentially affected entities are not government entities but rather producers, importers, and exporters of HCFCs.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Potentially affected entities are not government entities but rather producers, importers, and exporters of HCFCs. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on

communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific trade provisions already agreed upon and in effect under an international treaty.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action updates regulatory provisions related to the HCFC trade ban: the effect is to prohibit export of HCFCs to a small list of countries that are not Party to the Beijing Amendment to the Montreal Protocol.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Hydrochlorofluorocarbons, Imports.

Dated: March 7, 2014.

Gina McCarthy,
Administrator.

